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13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

14
15 CITY OF SAN JOSE; PEOPLE OF THE
16 STATE OF CALIFORNIA; GINDIN-R&B
COMPANY

17 Plaintiff,

18 vs.

19 MARTIN & ROSANNA ALVAREZ, et al.

20 Defendants.

NO. 1-96-CV 759667

DECLARATION OF ARNOLD ORTIZ
IN SUPPORT OF MOTION TO
MODIFY THE PERMANENT
INJUNCTION AND FINAL JUDGMENT
PURSUANT TO STIPULATION FILED
ON APRIL 11, 1997

DATE: January 29, 2010
TIME: 9:00 a.m.
DEPT: 5
JUDGE: Hon. Mary Jo Levinger

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24 I, Arnold Ortiz, declare as follows:

25 1. My wife and I are owners of 1339 Crucero Drive, San Jose, CA 95112. We
26 have owned this real property since on or about September 10, 2004.
27

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17 Plaintiff,

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PROOF OF SERVICE

21
22 SEE ATTACHED
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☐ causing the envelope/package to be delivered to an authorized courier or driver to receive the envelope/package

designated by the express service carrier for next day delivery.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for overnight delivery by an express courier service. Such correspondence would be deposited with the express service or delivered to the authorized express service courier/driver to receive an envelope/package for the express service that same day in the ordinary course of business.

Addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 30, 2009, at San Jose, California.

Barbara Wright

1 properties in the neighborhood commonly referred to as Santee. The 1996 Permanent
2 Injunction is continuing in nature with no specific review date, as stated in Paragraph 25
3 thereto:

4 Each and all of the requirements for compliance with the terms and provisions
5 of this Permanent Injunction and Final Judgment Pursuant to Stipulation shall
6 be continuing in nature.

7 Plaintiff seeks to have both the 1996 Permanent Injunction and the 1997 Permanent
8 Injunction contain the same terms as stated above.

9 Plaintiff makes this Motion to Modify the 1997 Permanent Injunction pursuant to Code
10 of Civil Procedure section 533 and Civil Code section 3424 on the grounds that the Court
11 may modify a stipulated permanent injunction and final judgment upon a showing that "the
12 ends of justice would be served by the modification."

13 This motion will be based upon this Notice of Motion and Motion; the Memorandum of
14 Points and Authorities in Support thereof and filed herewith; the evidentiary Declarations and
15 Exhibits filed herewith including the Declarations and Exhibits thereto of Barbara C. Wright,
16 Patricia Ramos, Patricia Fay, Cynthia Johnson, Mohamed Ahmed, Leo Michael Tran, Alice
17 Ogasawara, Kelly Aronica, Shannon Denos, Wesley Cheng, Silvina Gonzalez, Arnold Ortiz,
18 Alma R. Soto, Teresa Varela, Miriam Lopez, Diego Rodriguez, Leticia Mayo, Sandra Aguirre,
19 Dung Vu, Maria Muniz, Jose Delgado, Belen Campos, Dave Storton and Joe Cabrera; the
20 Request for Judicial Notice and Exhibits thereto, the Joinder in Support of this Motion, and
21 such further matters as may be appropriately presented and argued at the hearing on this
22 Motion.

23 Dated: December 23, 2009

RICHARD DOYLE, City Attorney

24 By 
25 Daisy M. Nishigaya
26 Deputy City Attorney

27 Attorneys for Plaintiff CITY OF SAN JOSE and
28 PEOPLE OF THE STATE OF CALIFORNIA

1 and regulations. (Denos Decl. at par. 8.) This would lead to the tenants, many of them
2 families with young children, to suffer from the lack of parking spaces within a reasonable
3 distance of where they live. (*Id.*) Also, many of the problems that previously plagued the
4 Santee neighborhood would likely return, such as rampant parking in fire lanes, abandoned
5 or inoperable vehicles parked, no available parking for tenants, and overcrowding of cars at
6 or near parking spaces. (*Id.*)

7 All of these examples and testimonials show that the tenants in Santee are in
8 desperate need for continued enforcement of the 1997 Permanent Injunction. Therefore, the
9 ends of justice will be served by modifying the 1997 Permanent Injunction to be continuing in
10 nature. (Civ. Code, § 3424 and Code Civ. Proc., § 533.)

11 6. Property owners in Santee.

12 As stated above, the parties entered into the stipulated Permanent Injunctions for the
13 purpose of "committing themselves to the general improvement of the Santee neighborhood"
14 and acknowledged that the Injunctions are "not punitive in nature." (Ex. A, at par. 38, p. 23.)
15 Plaintiff submits declarations from property owners under the 1997 Permanent Injunction.
16 (Cheng Decl.; Gonzalez Decl.; Ortiz Decl.; and Cabrera Decl.) The Permanent Injunction
17 promotes the general improvement of the Santee Neighborhood by requiring property owners
18 to keep their properties in good repair which, the witnesses state, they would not do
19 otherwise. (Cheng Decl. at par. 5; Ogasawara Decl. at par. 12.) According to these property
20 owners, the 1997 Permanent Injunction promotes public health and safety, and it should
21 continue in full force and effect. (Cheng Decl. at par. 5; Gonzalez Decl. at par. 6; Cabrera
22 Decl. at par. 4; Ortiz Decl. at par. 4.) Further, it enhances the neighborhood, which in turn
23 protects the property owners' investment in the property. (*Id.*)

24 Property owners are provided with Code Enforcement's report of violations and
25 corresponding photographs explaining the violations to them. (Tran Decl. Exs. A1 – A60.)
26 The City Attorney's Office (and the Court) considers mitigating and aggravating factors when
27 deciding how best to correct the violations and monitor the progress of the repairs. The
28 Permanent Injunction also helps property owners screen tenants and keep out undesirables